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*Attorneys for Defendants InComm Financial Services, Inc. and Pathward, N.A.*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

## KEVIN SMITH

Plaintiff,

VS.

INCOMM FINANCIAL SERVICES, INC. AND  
PATHWARD, N.A.

## Defendants.

Case No. 5:23-CV-4687-BF

**STIPULATED REQUEST FOR  
ORDER GRANTING PLAINTIFF  
LEAVE TO FILE AMENDED  
COMPLAINT; [PROPOSED] ORDER**

Judge: Hon. Beth Labson Freeman

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STIP. REQUEST FOR ORDER GRANTING PLAINTIFF LEAVE TO FILE A FIRST AMENDED  
COMPLAINT (Case No. 5:23-CV-4687-BF)

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1 Pursuant to Local Rules 6-1(b), 6-2, and 7-12 of the Local Rules of the United States  
2 District Court for the Northern District of California, Plaintiff Kevin Smith (“Plaintiff”) and  
3 Defendants InComm Financial Services, Inc. and Pathward, N.A. (“Defendants”), stipulate and  
4 agree as follows.

5 WHEREAS, Plaintiff filed his Complaint on September 12, 2023 (Dkt. No. 1);

6 WHEREAS, Plaintiff and Defendants entered a stipulation on November 16, 2023 to  
7 extend the time for Defendants to respond to the Complaint to December 15, 2023 (Dkt. No. 9);

8 WHEREAS, Defendants filed a motion to dismiss the Complaint on December 15, 2023  
(Dkt. No. 22);

9 WHEREAS, the parties conferred and negotiated a schedule to file their respective briefs  
10 in opposition (March 7, 2024) and reply (March 28, 2024), in advance of the April 18, 2024  
11 hearing (Dkt. No. 24);

12 WHEREAS, Plaintiff intends to file an amended complaint in lieu of a response to  
13 Defendants’ motion to dismiss;

14 WHEREAS, Plaintiff requests leave to file his Amended Complaint within 14 days from  
15 the date this stipulation is filed pursuant to Federal Rule 15(a)(2), which provides that the Court  
16 “should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2);

17 WHEREAS, without waiving any right to seek dismissal of the amended complaint,  
18 Defendants do not oppose Plaintiff’s request for leave to file an amended complaint;

19 WHEREAS, Plaintiff and Defendants agree that Defendants shall have 60 days from the  
20 filing of the amended complaint to file responsive motions;

21 NOW, THEREFORE, IT IS HEREBY STIPULATED AND REQUESTED by and  
22 between the parties, through their respective attorneys of record, that the Court enter an Order:

23

- 24 • Granting Plaintiff leave to file an Amended Complaint by March 21, 2024;
- 25 • Setting a deadline of May 20, 2024 for each Defendant to respond to the Amended  
26 Complaint; and

27  
28 STIP. REQUEST FOR ORDER GRANTING PLAINTIFF LEAVE TO FILE A FIRST AMENDED  
COMPLAINT (Case No. 5:23-CV-4687-BF)

- Vacating the Hearing on the Motion to Dismiss the Complaint, currently scheduled for April 18, 2024.

DATED: March 7, 2024

/s/ John D. Blythin

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*Attorneys for Plaintiff*

DATED: March 7, 2024

*/s/ Brian H. Chun*

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*Attorneys for Defendants*

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## SIGNATURE ATTESTATION

I hereby attest that I have obtained the concurrence of Brian H. Chun, counsel for Defendants, for the filing of this Stipulated Request.

/s/ John D. Blythin  
John D. Blythin

## [PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

**The Honorable Beth Freeman  
United States District Judge**

DATED:

STIP. REQUEST FOR ORDER GRANTING PLAINTIFF LEAVE TO FILE A FIRST AMENDED  
COMPLAINT (Case No. 5:23-CV-4687-BF)